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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,302	03/16/2001	Rasheed O. Yusuf	00-1020	9105

7590

05/14/2004

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EXAMINER

WANG, ALBERT C

ART UNIT	PAPER NUMBER
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2115

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/810,302

Applicant(s)

YUSUF, RASHEED O.

Examiner

Albert Wang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 4-10 is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

**DETAILED ACTION**

1. Original claims 1-10 are pending.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta, U.S. Patent No. 5,887,164, in view of Peter Szor, "Nexiv\_Der", Virus Bulletin, April 1996 ("Szor").

As per claim 1, Gupta teaches a computer apparatus comprising:

- a payload delivery application for delivering a payload to a storage device (Fig. 1b; Col. 8, lines 1-6, initialization routine for delivering software program to target memory 44);
- a disk operating system (DOS) including a DOS filing system (Col. 5, line 1, DOS FAT);
- a filing system interface between the payload delivery application and the DOS filing system for initiating open, close, read and write tasks with regard to the storage device (Col. 7, lines 6-19, handler 64);
- a basic input/output system (BIOS) that provides interrupt 13h services (Fig. 1b, system BIOS 68; Col. 6, lines 42-63).

However, Gupta does not expressly teach an Int 21h read only memory (ROM) client loader that interfaces with the payload delivery application and the BIOS that is operative when the computer apparatus is turned on, and which gauges a time when the DOS filing system is stable enough to permit communication with the storage device and which thereafter invokes the

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payload delivery application to deliver the payload to the storage device. Szor teaches gauging a time when the DOS filing system is stable (Int 13h Handler, "waiting for Int 21h vector to change"), and delivering the payload (Int 21h Handler). At the time of the invention, it would have been obvious to one of ordinary skill in the art to apply Szor's Int 21h ROM client loader to Gupta's computer apparatus. A motivation for doing so would have been to get a early start in delivering the payload.

As per claim 2, Gupta teaches the payload delivery application delivers a ROM-based payload stored in the flash memory to the storage device (Fig. 1b, option ROM 70).

#### *Allowable Subject Matter*

3. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. Claims 4-10 are allowed.

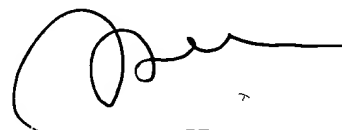
#### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Albert Wang whose telephone number is 703-305-5385. The examiner can normally be reached on M-F (9:30 - 6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C. Lee can be reached on 703-305-9717. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

aw  
May 11, 2004



THOMAS LEE  
SUPERVISORY PATENT EXAMINER  
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